

Subject: AEWc comments
From: "SARAH Jensen" <londersp@msn.com>
Date: Mon, 07 Nov 2005 18:23:12 -0500
To: helen.bass@noaa.gov

Ms. Bass,

The AEWc will be mailing you a signed version of these comments. In the interest of time, I am emailing them to you ahead of their arrival in the mail. Please call me if you have any questions.

Sarah L. Jensen
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Alexandria, VA 22314
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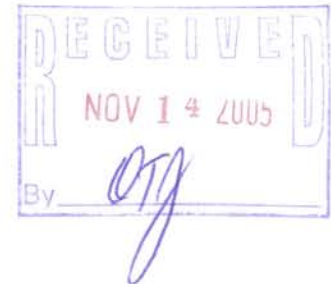


Alaska Eskimo Whaling Commission

P.O. Box 570 • Barrow, Alaska 99723

(907) 852-2392 • Fax: (907) 852-2303 • Toll Free: 1-800-478-2392

November 3, 2005



Via Email (John.King@noaa.gov) and U.S. Mail

John R. King
Responsible Program Officer
Coastal Programs Division
Office of Ocean and Coastal Resource Management
SSMC4 Room 11305
1305 East-West Highway
Silver Spring, MD 20910-3281

Re: *Supplementary Comments on Suggested Alternatives and Potential Impacts of Federal Approval of the Amended Alaska Coastal Management Program*

Dear Mr. King:

The Alaska Eskimo Whaling Commission would like to submit the following comments to supplement our August 3, 2005 comments on alternatives and potential impacts of the amended Alaska Coastal Management Program.

Summary

The following comments are in addition to and incorporate by reference those submitted to the Office of Coastal Resource Management (OCRM) by the Alaska Eskimo Whaling Commission (AEWC) on August 3, 2005. Through these supplementary comments, the AEWC highlights the important role of coastal review in the Arctic and requests that the Administrator of the National Oceanic and Atmospheric Administration (NOAA) and the Director of OCRM, at their earliest convenience, assemble a meeting between state officials and representatives of the AEWC and the North Slope Borough. The purpose of this meeting is to provide a neutral forum for discussing how our community may continue to provide meaningful local input into the CZMA process on the North Slope under the amended Alaska Coastal Management Plan (ACMP).

Supplementary Comments

In our ongoing review of the amended ACMP, the AEWC again notes with grave concern what appears to be a significant lack of communication between the state and our local community on this matter. The communications that have occurred, at times have been somewhat contentious, which is not the AEWC's preferred approach to problem solving.

On the North Slope, the AEWC, North Slope Borough, and others have put tremendous effort, over many years, into the creation of processes to facilitate communications between representatives of our community and offshore oil and gas operators and their permitting agencies. The goal of these communications is the development of mutually acceptable solutions to existing or potential conflicts arising out of interactions between offshore oil and gas development and subsistence hunting. For the most part, our efforts have been focused on three sets of issues – the effects of noise in offshore waters, oil spill risk, and concerns related to project siting, timing, and safety.

Under the Marine Mammal Protection Act's (MMPA's) "no unmitigable adverse impacts" standard, we have created a process for negotiating conflict avoidance agreements with exploration, development, and production companies, aimed at limiting the effects of industrial noise and traffic on the bowhead whale migration and hunt. Similarly, we have held successful negotiations on the development of measures to protect our communities in the event of a damaging oil spill. These negotiations reflect the requirements of the MMPA and help to fill the void left by Congress when it passed, and in 1990 amended, the Oil Pollution Act without providing realistic measures to address the loss of subsistence uses in the event of an oil spill. Under the Coastal Zone Management Act (CZMA) and the ACMP, we provide input on the siting and timing of development projects and on the overall safety of each project.

In all cases, we employ our traditional knowledge of the Arctic to ensure that the needs of all stakeholders are addressed and that offshore development proceeds in the safest manner possible. When stakeholders and agencies work with us, employing open and frank communications, these processes proceed smoothly and the resulting development plans incorporate the needs of all concerned. In addition, the plans offer protections for our arctic environment and living resources.

The ACMP review process on the North Slope reflects this overall approach to oil and gas development and is a critical part of our consultation framework, especially with respect to projects in federal waters. Since federal projects in the OCS are not subject to North Slope Borough permitting, it is through the ACMP process that local concerns regarding such issues as siting, timing, and safety measures, and local knowledge of how to address these concerns, are factored into permitting decisions. Of course, this is precisely the intent of the CZMA.

The drastic and unnecessary restrictions on our input to the CZMA review process, which seem to follow from the state's rewriting of the ACMP, essentially deny us this

John R. King
November 3, 2005
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critical local consultation option and deny the process the benefit of our local knowledge. The result is a less thorough CZMA process on the North Slope and an increased risk to our coastal environment, without an identifiable benefit to the state's and the nation's goal of promoting offshore oil and gas development.

Given the state's limited communication with our community on its ACMP revisions, it is unclear whether the state in fact intended this result. Therefore, the AEWG respectfully requests that, under their own authority and that of the NOAA-AEWG Cooperative Agreement, the Administrator of NOAA and the Director of OCRM convene a meeting with officials of the state government, including Jim Clark, Chief of Staff to Governor Murkowski, Michael Menge, State Commissioner for Natural Resources, _____, and representatives of the AEWG and North Slope Borough, to determine how our community may continue to provide meaningful local input into the CZMA process in Alaska.

We believe that the involvement of the federal agency having jurisdiction over our marine mammal subsistence hunting and the federal agency responsible for review of the ACMP revisions might help to relieve tensions and further discussions on these important matters. Our representatives can be available at your convenience.

Thank you for your time and attention. If you have any questions, please do not hesitate to call me.

Sincerely,


Maggie Ahmaogak
Executive Director

cc: Vice Admiral Conrad C. Lautenbacher (Ret.)
Harry Brower, Jr., Chairman
AEWG Commissioners
Mayor George N. Ahmaogak, Sr., North Slope Borough

ALASKA FEDERATION OF NATIVES, INC.

2005 ANNUAL CONVENTION

RESOLUTION 05-10

TITLE: ALASKA COASTAL MANAGEMENT PROGRAM

WHEREAS: Alaska Federation of Natives supports programs that contribute to the economic, social, and cultural well being of the residents of rural Alaska; and

WHEREAS: Local control of coastal resources, including subsistence, is essential to the quality of life for rural Alaska residents; and

WHEREAS: The Alaska Coastal Management Program (ACMP) has provided an important means for local control of coastal resources and uses; and

WHEREAS: Proposed changes to the ACMP would severely restrict the ability of the Coastal Resource Service Area Boards (CSRA) to manage coastal resources and uses; and

WHEREAS: Changes to the ACMP eliminate the ability of the CSRA to establish meaningful enforceable policies for ACMP consistency reviews of coastal projects, especially regarding the impacts on subsistence and habitats; and

WHEREAS: The Office of Ocean and Coastal Resource Management in NOAA is currently assessing the impacts of the ACMP changes through development of an environmental impact statement.

NOW THEREFORE BE IT RESOLVED by the delegates to the 2005 Annual Convention of the Alaska Federation of Natives, Inc., that the Alaska Federation of Natives supports a thorough analysis by the Office of Ocean and Coastal Resource Management of the effects of the proposed changes to coastal resources and uses, in subsistence and coastal habitats before November 7, 2005; and

BE IT FURTHER RESOLVED, that we oppose any bill or administrative action which weakens the ability of the CSRA to protect our environment and the resources upon which we depend and that CSRA required and special task funds are not eliminated; and

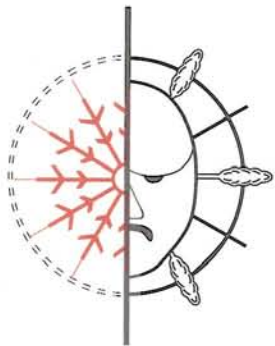
BE IT FINALLY RESOLVED, that this resolution be forwarded to Governor Murkowski urging him to direct the Commissioner of ADNR to review the agency's interpretation of the ACMP regulations, and if necessary, revise the regulations to make it clear that coastal districts have the ability to establish subsistence use areas and meaningful enforcement policies without being subjected to undue regulatory burdens.

SUBMITTED BY: KAWERAK/NSHC, UNPEAKGVIK INUPIAT CORPORATION, NATIVE VILLAGE OF BARROW, ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS

COMMITTEE ACTION: DO PASS, SUBSISTENCE, TIER 2

CONVENTION ACTION: AMENDED/PASSED





ALASKA INTER-TRIBAL COUNCIL
Advocating for Tribal Governments Across Alaska

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October 31, 2005

Helen Bass
Environmental Protection Specialist
National Oceanic and Atmospheric Administration (NOAA)
OCRM/CPD, N/ORM3 Station 11207
1305 East-West Highway
Silver Spring, MD 20904

Sent by Email to Helen.Bass@noaa.gov

Dear Ms. Bass:

These comments respond to the October 7, 2005 *Federal Register* notice requesting comments on the draft environmental impact statement (EIS) regarding proposed changes to the Alaska Coastal Management Program (ACMP). This letter supplements our earlier comments submitted during the scoping phase for this EIS. Our comments focus on the effects of the changes, environmental justice issues, and the process for government-to-government consultation.

We are quite concerned that the proposed changes to the ACMP will significantly affect Native people, especially in regard to subsistence resources and the habitats on which they depend. While the draft EIS acknowledges there will be impacts to subsistence, it concludes that the environmental and socio-economic matters are neutral. This conclusion is not supported by the analysis in the draft EIS. It is our understanding that changes to the ACMP will result in gaps for both habitat management and subsistence matters that are not sufficiently addressed by either federal or state law.

The conclusions reached in the draft EIS about socio-economic resources are disappointing. While Chapter 8 recognizes that the ACMP changes are "likely to have disproportionate economic and social impacts on minority and low-income populations," NOAA concludes in Chapter 10 that there will be neutral socio-economic effects. Again, the draft EIS analysis does not support this conclusion.

We do not believe that NOAA has met the environmental justice requirements of Executive Order 12898, NOAA guidance on Environmental Justice, and the Council on Environmental Quality (CEQ) guidance on this matter. While the draft EIS concludes

that there will be impacts to minority and low income populations, the document does not describe these effects. The executive order requires that NOAA collect and analyze data on subsistence. Instead, the DEIS simply repeats information from studies completed by the State of Alaska. We also note that the method used by NOAA to identify areas of the state with Native populations leaves out consideration of Native villages located in a census area with an overall Native population that is less than the statewide average.

The CEQ guidance on Environmental Justice and the National Environmental Policy Act encourages agencies to develop public participation efforts early in the process. This document recommends agencies develop specific strategies that will involve low-income and minority populations in the EIS. Also, it recommends identifying mitigation measures to address environmental justice concerns.

Unfortunately, NOAA issued the draft EIS with an agency-preferred alternative before completing its government-to-government consultation. By all appearances, NOAA is holding the November 9 meeting to justify a decision that has already been made, and this process does not fulfill the requirements of Executive Order 13175.

We request that NOAA extend the comment period until it has an opportunity to develop a meaningful government-to-government consultation process. A meaningful process would include education and outreach efforts to tribal Traditional and IRA Councils in coastal areas of the state. As discussed in the CEQ guidance, it may be necessary to translate materials in some areas of the state where English is the second language. Translation is especially important for elders who cannot adequately express themselves in English.

In closing, the Alaska Intertribal Council is extremely concerned about the potential effects of the ACMP changes to both the environment and the Alaska's Native people. The draft EIS does not adequately analyze either the environmental or socio-economic effects of the proposed ACMP changes. To date, we are not aware of any effort to fulfill the government-to-government consultation requirements of Executive Order 13175, and the proposed meeting on November 9 is not sufficient to meet these requirements.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Sumida', written over a horizontal line.

Steve Sumida
Executive Director

**Testimony
of the
Alaska Oil and Gas Association
on
OCRM's Review of Amendments to the
Alaska Coastal Management Program DEIS**

**Public Hearing, November 1, 2005
Anchorage, Alaska**

Good afternoon. My name is Judy Brady. I am executive director of the Alaska Oil and Gas Association (AOGA). AOGA is a private, non-profit trade association whose 17 member companies account for the majority of the oil and gas exploration, development, production, transportation, refining and marketing activities in Alaska.

AOGA appreciates the opportunity to provide public comment on OCRM's review of amendments to the Alaska Coastal Management Program DEIS. We will be providing written comments prior to the end of the public comment period on November 7, 2005.

As a background note: AOGA has been participating as a stakeholder in the evolving development of Alaska's Coastal Management Program since the enabling legislation was passed by the Alaska legislature in 1978.

AOGA supports Alternative One in the DEIS. This confirms OCRM's preliminary decision in 2005 that the ACMP amendments meet the approvability of the Coastal Zone Management Act (CZMA). We believe that the analysis in the DEIS supports Alternative One. Under this alternative, the Office of Ocean and Coastal Resource Management (OCRM) can approve the Alaska program change amendment submitted on June 2, 2005, thereby incorporating the amendment into the federally approved Alaska Coastal Management Program.

AOGA will have more extensive and directed comments by the deadline of November 7. For today we would note, that aside from some inaccuracies, and what we believe to be mischaracterizations, which we will address in our written comments, the text of the DEIS is cautious and guarded, as is appropriate. Although there are numerous places where the DEIS states that there may be possible impacts to areas of concern, including subsistence and environmental justice, the actual analysis says that while the effects are possible, they will be mitigated by existing federal and state law. Most importantly, the text reaffirms the approvability of the amendments under the CZMA.

Overall, AOGA views the amendments as critical and absolutely necessary to the updating and streamlining of the Alaska Coastal Management Program. Failure for OCRM to take action or be slow to act (alternative 2) or to deny the amendment (alternative 3) would end the coastal management program in Alaska. We believe that with the adoption of these amendments and with continued careful and thoughtful governance of the ACMP within the spirit and guidelines of Alaska's EO 106, HBs 191, 69, 86, and SB 102, the ACMP will have renewed vigor and purpose in the management of Alaska's coastal resources.

This is a much more positive place than we were four years ago, when we had come to the conclusion that the ACMP program had become so complex and dysfunctional that it might

not survive. It was after lengthy discussion with other stakeholders that we finally decided that major updating, streamlining and refocusing was absolutely required – if there was to be a workable coastal zone management program in Alaska.

Before coming to that conclusion AOGA had participated for three years in an intensive effort to update and streamline the ACMP consistency determinations. This effort, initiated by the state in 1999, involved the state agency office (Division of Governmental Coordination), the coastal districts, the Coastal Policy Council and municipalities. While some coastal districts are now saying that “there were not problems with ACMP before” – the record of those three years of meetings and review tell a different story. One DGC manager told the group of coastal districts and other stakeholders that he had a “stack of files” on his desk from 1984 “when folks started proposing changes to these regulations.” There were, in fact, problems with every aspect of the program, as identified in meetings by coastal districts, the Coastal Policy Council, the industry, and municipalities. It was generally agreed that to “fix” ACMP, the standards would also have to be changed, along with many of the process requirements.

Internally we asked ourselves at several junctures “is it worth the effort and time to revitalize Alaska’s coastal management program? Do we need a coastal management program when Alaska’s environmental protection structure is so much a part of the fabric of our local, state and federal laws?” We believed then, and we believe now, that the state and federal laws protecting air, land, water, habitat, fish and game and subsistence provide a high standard of environmental protection for all of the state’s coastal lands and waters as well as the state’s interior lands and waters. The community and legislative leadership of coastal areas throughout the years since Alaska’s statehood have been consistently successful in identifying and passing legislation that protects their local interests. Legislative and local government protection of Alaska’s air, land and water, habitat and wildlife has been a priority since Alaska’s Constitutional Convention when these issues, particularly fish and game issues, became the center pieces of our Constitution.

This concludes our remarks. We thank you for the opportunity to comment. The updating of Alaska’s Coastal Management Program has been a long, slow, sometimes tedious, often contentious undertaking over the years – starting shortly after the program was initiated in 1978. There is still a lot of work left to do to implement these changes. AOGA believes the revitalization of the ACMP is worth the effort that has gone before and will be worth the effort still to be undertaken.

In closing, AOGA again urges the OCRM to adopt Alternative One that will assure an Alaska Coastal Management Program.

Alaska Oil and Gas Association



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Phone: (907)272-1481 Fax: (907)279-8114
Judith Brady, Executive Director

Via Email: Helen.Bass@noaa.gov

November 7, 2005

Ms. Helen Bass
Coastal Program Division
Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration
SSMC4 N/ORM3 Rm. 11207
1305 East-West Highway
Silver Spring, MD 20910

DEIS – Amendments to the Alaska Coastal Management Program

Dear Ms. Bass:

This letter provides the comments of the Alaska Oil and Gas Association ("AOGA") regarding the September 2005 Draft Environmental Impact Statement ("DEIS") entitled *Office of Ocean and Coastal Resource Management's Review of Amendments to the Alaska Coastal Management Program*. Section I below provides both a brief introduction of AOGA and its long-standing interests in reform of the Alaska Coastal Management Program ("ACMP"), and a short summary of AOGA's primary concerns with the DEIS. Section II provides AOGA's more detailed comments regarding the Office of Ocean and Coastal Resource Management's ("OCRM's") DEIS. AOGA appreciates your consideration of our concerns.

I. INTRODUCTION AND SUMMARY OF COMMENTS

AOGA is a private, non-profit trade association located in Anchorage, Alaska. Its seventeen member companies account for the majority of oil and gas exploration, development, production, transportation, refining and marketing activities in Alaska. On behalf of its members, AOGA has been one of the primary stakeholders in coastal zone regulation since enactment of the Alaska Coastal Management Act ("ACMA") in 1978. Over the past several years, AOGA has been actively engaged in the State of Alaska's efforts to improve the clarity and predictability of the ACMP, and to reduce areas of duplication and undue delay. Prior to the largely successful regulatory reform efforts of the State, the ACMP was considered by the business development community to be a very significant regulatory impediment to future investment and development in Alaska because it lacked predictability, its standards were unclear in purpose and intent, and the coastal zone consistency review process was not subject to a predictable and reliable time schedule.

Although the revised ACMP is not perfect, it does reflect the State's concerted effort to reform the program by returning to the original intentions of the Alaska Legislature in enacting the ACMA. In doing so, the State has balanced, on the one hand, the laudable purposes of the federal Coastal Zone Management Act ("CZMA") and, on the other hand, a strong desire to eliminate the problems and abuses that unduly burdened development in Alaska under the former provisions of the ACMP. Having completed the difficult legislative and regulatory processes required to achieve reform, and having completed further tough negotiations with OCRM resulting in some modifications to the ACMP, the Alaska Legislature has provided OCRM with a very clear statement of the public interest of Alaska's citizens. Through enactment of SB 102 and HB 191, the Legislature has stated that the ACMP must be timely reformed as proposed, or the best interests of Alaskans dictate termination of the ACMP and withdrawal of Alaska from the CZMA coastal zone program. It is now November, 2005, and the January 1, 2006 deadline is fast approaching. We strongly encourage OCRM to complete its NEPA process and to timely approve Alaska's ACMP amendments (Alternative 1 in the DEIS).

AOGA's primary goal in commenting on OCRM's DEIS is to ensure that the NEPA process is legally proper and the related analysis is accurate and sufficient. In this respect, we have three primary concerns:

1. The required scope of the NEPA analysis depends upon the nature of the decision being made. For this reason, it is always important to clearly and prominently identify the purpose and the scope of the action under consideration, including aspects of the decision that are unique or distinguishing. The purpose of OCRM's proposed action – approval of revisions to Alaska's ACMP – is different from site-specific development projects receiving federal permits or many other types of programmatic decisions. This point is evident in the text of Appendix A (Vol. II) to the DEIS, as well as in the NEPA analysis performed in connection with CZMA approval of the original ACMP, but is much less clearly explained in the text of the DEIS. In the FEIS, OCRM should provide an explicit link between the scope of its NEPA analysis and the nature of this federal decision.
2. AOGA and its member companies have always worked with local communities and native organizations to assure sustainable subsistence resources. Moreover, AOGA was closely involved in the public discussions and efforts that led to the revised subsistence standard adopted at 11 AAC 112.270. Given the history of safeguarding subsistence resources and given the intent of the new subsistence standard, the extent of the inaccuracies in the discussion of subsistence in the DEIS is very disappointing. Because of the inaccuracies in contrasting of the former and current subsistence standards, the DEIS incorrectly overstates the possibility of adverse impacts to subsistence resources. The FEIS and the Record of Decision ("ROD") issued by OCRM should accurately analyze the standard and should clarify that the potential for adverse effects is sufficiently minimized such that OCRM has concluded coastal subsistence resources will receive protection adequate to satisfy the requirements of the CZMA.

3. OCRM's discussion of environmental justice concerns is also inaccurate. Executive Order 12898 has been misapplied in the DEIS, leading to an incorrect overstatement of the potential for disproportionate impacts to minority and low income populations. The FEIS should present a proper environmental justice analysis, and the accompanying ROD should explain that approval of the reformed ACMP is consistent with environmental justice interests.

Each of these concerns is explained in detail in Section II below.

II. DETAILED COMMENTS ON THE DEIS

A. CZMA Approval and NEPA

1. Modification of an approved program under the CZMA

The federal action under consideration by OCRM is the approval of revisions to Alaska's coastal management program under authority of the CZMA. The procedural and substantive standards for OCRM's decision are provided in section 306(d) of the CZMA, 16 U.S.C. § 1455(d), and in 15 C.F.R. part 923. Under the CZMA, OCRM may either approve or disapprove of the revised ACMP as proposed by the State of Alaska.

It is important to acknowledge that the CZMA does not authorize OCRM to partially approve and partially disapprove a program, or to impose conditions upon its approval that modify a proposed program. Nor does the CZMA grant OCRM authority to disapprove a program found to comply with the statutory requirements in section 306(d). Accordingly, the federal decision under consideration is both a programmatic decision (rather than site-specific development proposal), and circumscribed by law to approval or disapproval pursuant to statutory standards.

Under the CZMA, states are authorized to develop coastal management programs under any one, or some combination of, three specified techniques: (A) local policies and implementation criteria with state enforceability; (B) direct state implementation criteria and administrative process; and (C) a "networked" program that aligns existing regulatory programs with state coastal zone enforceable policies. See 15 C.F.R. §§ 923.42-.44. The policy choice among these techniques, so long as the program meets the statutory requirements of section 306(d) of the CZMA, is one left to the sound discretion of each state. As acknowledged by OCRM in Appendix A to the DEIS (Vol. II), Alaska's revised program follows technique B (direct state implementation) combined with technique A (local implementation criteria) to allow coastal districts to develop enforceable policies related to matters of local concern, including subsistence.

Importantly, OCRM has determined that the requirements for a technique B program have been met, and that the subsistence standard meets the additional requirements for technique A. DEIS (Vol. II) at Appendix A, p. 3. Because OCRM has determined that the revised ACMP meets these criteria, OCRM must defer to the policy choice allowed states under the CZMA and made by Alaska in its proposed revisions. Indeed, OCRM has already preliminarily determined that the revised ACMP meets all the procedural and substantive requirements for CZMA approval. DEIS (Vol. II) at Appendix A.

Because an understanding of the nature of the federal decision is critical, we urge OCRM to revise Section I and the Executive Summary of the DEIS. We recommend that OCRM move portions of the text of Appendix A up into Section I in order to provide greater clarity about the federal action under review.

2. NEPA Process

In contrast to the substantive requirements of the CZMA, NEPA does not dictate the federal decision. The purpose of NEPA is to ensure thoughtful federal review by requiring thorough consideration and public discussion of the environmental impacts of a proposed action. The scope of this review, including the scope of the alternatives that should be analyzed, is necessarily informed by the nature and purpose of the proposed action.

AOGA supports selection of Alternative 1, and also commends OCRM for its analysis in the DEIS of a reasonable range of alternatives. NEPA does not require a federal agency to analyze alternatives that do not comport with the federal authorities underlying the pending federal decision. Here, although it is possible to conceive of an infinite number of modifications to the ACMP as proposed by Alaska, including entirely different programs based upon techniques A or C, the CZMA grants the 50 states, and not OCRM, the discretion to develop their coastal management programs.

In the current context, the State of Alaska has developed an amended program that uses technique B in providing for direct state implementation criteria, while still providing for more narrowly structured local implementation consistent with aspects of technique A. This policy choice does not enjoy universal support. Rather, some local coastal districts would have preferred an entirely local implementation scheme. However, so long as the State's program meets the requirements of the CZMA, the State of Alaska's considered policy choices are not subject to review and reconsideration under the guise of NEPA review or environmental justice concerns (as discussed further below).

In finalizing the NEPA process, AOGA recommends that OCRM revisit the original FEIS prepared in connection with federal approval of Alaska's initial ACMP. Much of that EIS remains equally applicable today with respect to the purpose of the ACMP, the nature of the affected environment and the analysis of environmental impacts. Pursuant to 40 C.F.R. § 1502.20, AOGA recommends that OCRM expressly tier its NEPA review of the revised ACMP from the earlier NEPA analysis of the original program.

In addition, although the DEIS includes information regarding the cumulative impacts of the proposed action, there is no discrete section in the DEIS that separately discusses the cumulative impacts. See 40 C.F.R. §§ 1508.7, 1508.27(b)(7). Given the broad programmatic nature of the federal decision, and given the confusing and conflicting caselaw and guidance regarding cumulative impacts assessment, we appreciate that divining the one "right" approach to discussion of cumulative impacts is impossible. We have reviewed the most recent EISs for CZMA approval of state programs (e.g., the coastal zone management programs for Texas and Indiana) and have found that these NEPA documents, like the DEIS, discuss cumulative impacts combined within the analysis of direct and indirect effects. Accordingly, while the combined approach used in the DEIS has precedent, for purposes of clarity and to ensure that OCRM's compliance with NEPA requirements is well-documented, the existing

information regarding cumulative impacts could be reorganized and presented in a separate discussion of cumulative impacts in the FEIS.

B. Subsistence Impacts Analysis

AOGA and its members recognize the importance of subsistence and subsistence lifestyles in Alaska. We support protection of subsistence resources and subsistence activities in the conduct of oil and gas activities. However, AOGA respectfully, and strongly, disagrees with OCRM's analysis of the environmental impacts of the revised subsistence standard. DEIS at § 7.4.6. OCRM's analysis mischaracterizes the effects of the new standard in comparison to the prior subsistence standard. Moreover, the DEIS inappropriately takes issue with the State's policy choice to develop a state implementation-based (technique B), rather than local implementation-based (technique A), program. While it is clear that this policy choice is dissatisfying to some local coastal districts that would have preferred a locally-controlled coastal management program, there is nothing but rank speculation to support the notion that a state-controlled program will lead to adverse effects for subsistence uses and resources, compared with a locally-controlled program.

1. The current subsistence standard does not eliminate any pre-existing mitigation requirement

The conclusion that Alternative 1 may result in negative impacts to subsistence resources is based on an erroneous premise. Specifically, the DEIS incorrectly states that the previous standard required mitigation for impacts to subsistence resources. This is not true. See 6 AAC 80.120 (former subsistence standard). Because the State of Alaska chose to use a consistency review process rather than a permit program to comply with the CZMA, no conditions, including mitigation requirements, could be attached to a consistency determination. The current standard has been drafted to ensure it cannot be interpreted to impose a new mitigation requirement; not to eliminate pre-existing subsistence protections.

Prior to HB 191, Chapter 46.40 did not authorize the issuance of a coastal zone permit, or a consistency determination that had the effect of a permit, by attaching conditions such as mitigation measures to ensure consistency with the ACMP. Instead, the statute authorized the use of existing governmental structures and authorities to implement the ACMP. As the legislature stated,

It is the policy of the state to

* * *

(5) utilize existing governmental structures and authorities, to the maximum extent feasible, to achieve the policies set out in this section; and

(6) authorize and require state agencies to carry out their planning duties, power and responsibilities to take actions authorized by law with respect to programs affecting the use of the resources of the coastal area in accordance with the policies set out in this section and the guidelines and standard adopted by the Alaska Coastal Policy Council under AS 46.35.

§ 2 Ch 84 SLA 1977. The statute authorized adoption of a review process, rather than a permitting process. It required coastal resource districts to implement coastal management programs under its zoning authority and other land use controls. AS 46.40.090. As a result, district programs were implemented through pre-existing local authorities and districts were not permitted to impose conditions, such as mitigation, through consistency review.

The ACMP revisions embodied in Alternative 1 stem, in part, from misguided attempts to impose conditions, including mitigation measures, on consistency review determinations under the former program. Adding conditions to consistency determinations created a permit process that was contrary to legislative intent and authorization. As a result, program reform became not only necessary, but imperative to reduce overlapping and conflicting regulations by different governmental entities.

Although neither the state nor a coastal district could impose mitigation requirements under the prior ACMP, an applicant could voluntarily include mitigation in its proposal. However, the prior standard did not require mitigation. The prior standard required that possible adverse effects on subsistence be studied and appropriate safeguards to assure subsistence usage be provided. Safeguards could take a variety of forms, including avoiding or minimizing impacts. Similarly, the requirement in Alternative 1 that impacts to subsistence resources be avoided or minimized could be met in a variety of ways. A proposal that includes appropriate mitigation as a means of minimizing impacts could be found to meet the standard. In both instances, under the prior ACMP or Alternative 1, mitigation is voluntary and within the discretion of the applicant.

The DEIS incorrectly indicates that the absence of a mitigation requirement in the proposed standard is a change that results in a potential negative impact to subsistence resources. Because there was no mitigation requirement under the prior subsistence standard, the lack of a mitigation requirement in the proposed standard is not a change and no negative impacts to subsistence uses are likely to result.

2. State versus local control is a policy choice with political, but not environmental, consequences

The analysis in the DEIS of Alaska's subsistence standard also reflects a value judgment that a locally-controlled ACMP would ensure a higher level of protection for subsistence uses and resources than will a state-controlled program. This conclusion is entirely without basis in the record.

The priority placed upon protection of fish, game and habitat and upon protection of hunting, fishing and gathering uses, whether subsistence, commercial or sport uses, in Alaska's coastal and inland areas is difficult to overstate. Alaska is the only state that has made protection and management of fish, game and habitat a cornerstone of its Constitution. Indeed, every Legislature since Statehood has passed legislation directed to protection and management of fish, game and habitat. Moreover, the protection of fish, game and habitat, and related uses, is literally under constant review and scrutiny by numerous local, state and federal entities including state fish & game regional boards with local representatives, federal subsistence boards with local representatives, federal and state fisheries management boards and councils, the Alaska Department of Fish & Game, the Alaska Department of Natural Resources, the U.S. Fish & Wildlife Service, the National Marine Fisheries Service, various federal land stewards (e.g., U.S. Bureau of Land Management, National Park Service) and federal

regulatory agencies (e.g., U.S. Environmental Protection Agency, U.S. Army Corps of Engineers (wetlands)). Appointments to the state and federal boards are the subject of intense scrutiny and public debate, and meetings of these bodies are routinely jammed with interested stakeholders. No doubt it is difficult for persons living in urban states and areas to appreciate the intensity of Alaska's interest in and regulation of these matters; however, there is no place in Alaska that has escaped the focus on protection of fish, game and habitat on which subsistence, commercial and sport hunting and fishing depends.

In this unique context, the Legislature determined to primarily rely on state standards for protection of fish, wildlife and habitat because the state's standards, as revised, incorporate the laws, regulations and management imperatives devised since Statehood. Even then, the Legislature provided an opportunity for coastal districts to add enforceable policies for unique situations, including those involving subsistence, that are not adequately addressed in federal or state law. AOGA is aware of no reason why the state's policy choice to align the ACMP with technique B in favoring state implementation, with substantial local involvement regarding subsistence issues (and other matters of local concern), assures less protection of subsistence resources and uses than would an entirely locally implemented ACMP. Certainly, the DEIS contains no data, information or analysis that leads to such a conclusion. We appreciate that coastal districts have an understandable political preference for local control; however, understandable political preferences are not grounds for establishing probable adverse environmental impacts.

Alaska's revised ACMP does not diminish the importance of subsistence uses and resources, nor does it remove the priority for subsistence uses. As the DEIS recognizes, other state and federal laws provide a priority for subsistence uses. Consistent with the legislative intent to avoid duplicative regulatory requirements, the revised ACMP relies upon existing state and federal priorities for subsistence uses without restating those priorities as an ACMP standard. The ACMP recognizes that duplicative standards at different levels of government do not provide better resource protection. However, where there are unique matters of local concern not otherwise addressed by state or federal law, the ACMP preserves a coastal district's ability to adopt an enforceable policy to address that unique issue.

We accept that from the perspective of some coastal districts, state implementation standards (even as supplemented here with substantial local involvement in subsistence issues) may be perceived to provide less protection than an entirely local program. However, OCRM must distinguish parochial perceptions supported only by speculation from documented and expected environmental effects. Alaska's revised program meets the requirements of the CZMA, and assures protection of coastal zone subsistence uses and resources. Though this will occur through a program primarily implemented

¹ It is worth emphasizing here that fish, wildlife and habitat protection are just as important to Alaskans living in inland areas as they are to coastal residents. There are a myriad of subsistence-based communities and Alaska citizens outside the coastal zone in the interior of Alaska, including along inland river systems. There is no evidence or indication whatsoever that subsistence resources and uses located outside the coastal zone, and therefore beyond the management of local coastal districts since adoption of the ACMP in 1978, have been inadequately or less protected or have suffered losses relative to coastal district areas.

through state standards, and though this approach may not be preferred by some coastal districts, the State's policy choice has not and cannot be shown to reflect a reduction in environmental protection of subsistence uses and resources.

AOGA requests that OCRM substantially revise its analysis of subsistence impacts in the FEIS. The FEIS should reflect the fact that Alternative 1 does not change either the subsistence priority or the role of mitigation for subsistence impacts and therefore, no negative impacts to subsistence are anticipated.

C. Environmental Justice Analysis

AOGA is a strong supporter of the intent of EO 12898 in ensuring efforts to achieve environmental justice by addressing disproportionately high and adverse human health or environmental effects resulting from federal programs and federal approvals. However, the analysis performed in the DEIS does not comport with the requirements of EO 12898. Moreover, the statement interspersed throughout the DEIS that there are serious environmental justice concerns from the proposed action is entirely unsupported by the analysis in the DEIS.

EO 12898 requires federal agencies, under guidelines subsequently issued by the Council on Environmental Quality ("CEQ") and the Environmental Protection Agency ("EPA"), to identify and address the disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations. Environmental justice analysis entails a three-step process: (1) identification of minority and low-income populations affected by the proposed action; (2) identification through the EIS impact analysis of those reasonably foreseeable adverse effects of the proposed action and alternatives that are high and adverse impacts; and (3) analysis and discussion of how and where the proposed action or its alternatives have high and adverse impacts that disproportionately impact the identified minority and low-income populations.

The analysis of environmental justice in the present DEIS is incomplete and legally incorrect. The EJ analysis begins by misapplying step one, then skips step two entirely. As a result, in step 3, the DEIS discusses possible adverse impacts in a manner that has little or no relationship to the requirements of EO 12898. Finally, the analysis and discussion, inadequate as it is, does not conclude that there will be disproportionately high and adverse impacts resulting to minority and low-income populations. However, other portions of the DEIS text mischaracterize the results of the environmental justice analysis.

First, most of the text of the EJ section of the DEIS identifies the disproportionate presence of native and low-income populations in Alaska's coastal areas relative to the State as a whole. This analysis leads to a well-known given -- that resident populations in Alaska's coastal areas are primarily native. These areas are often remote with local native populations reflecting traditional occupations and the close tie between Alaska natives and water as a source of transportation and food. Analyzed in this skewed manner, every adverse effect occurring in coastal areas of whatever nature and whatever cause will necessarily have disproportionate EJ affects.

The federal CZMA only regulates the coastal zone. Accordingly, the focus on coastal areas is a function of the federal statutory scheme under consideration and has nothing to do with the resident minority or low-income populations in these areas. Because the purpose of EO 12898 is to ferret out attempts to impose adverse environmental impacts on populations with little or no political representation, it is important to acknowledge that the statutory focus here on coastal areas is a function of the geographic scope of the federal program and nothing else. Moreover, it is entirely improper to determine disproportionality in this instance by comparing state-wide population and income statistics to coastal areas because the proposed action -- regulation of the coastal zone -- could not be relocated to non-coastal areas of the State. A proper analysis would identify the demographics of Alaska's coastal areas. Then, in step 3, the analysis would consider whether the proposed action has a disproportionate impact on minority and low-income populations compared to other populations located in the coastal zone. Were this step reached, we think it apparent that the impacts of the ACMP revisions, whether positive, neutral or adverse, apply with equal force and effect to coastal residents regardless of their origin or their income status.

Second, step 2 of the EJ analysis is entirely absent from the DEIS. In step 2, OCRM should identify those environmental impacts determined in the analysis of effects section to be "high and adverse." The DEIS makes clear that most of the changes to the ACMP are neutral to environmental impacts. As discussed above, we believe such a conclusion should be reached with respect to subsistence resources as well. However, even taking the subsistence analysis at its current face value, it does not conclude that there will be high and adverse impacts. To the contrary, the DEIS concludes that the changes to the subsistence standard "may have negative effects on subsistence resources and subsistence lifestyles, however, this may be offset by the continued requirements of other federal and state subsistence laws and program requirements." DEIS at 159. There are many ways to scale both the probability of adverse impacts (e.g., speculative, remote, possible, probable, likely and certain) and the intensity of those impacts (e.g., none, negligible, minor, moderate, significant and high). No indication of probability or intensity is reached in the current DEIS, let alone a finding that the probable adverse impacts are "high." As contemplated in EO 12898, where there are no high adverse impacts, there are no environmental justice concerns to analyze and the inquiry ends. Here, the EJ analysis is entirely, and inappropriately, divorced from any conclusion regarding the expected intensity of adverse impacts.

Third, inadequate though it is, the EJ analysis does not demonstrate high and adverse disproportionate human health or environmental impacts to minority or low-income populations. Instead, the EJ analysis concludes, under economic impacts, that "[c]hanges to the State's subsistence standards and the district plans may create circumstances that will result in negative effects to subsistence resources." DEIS at 178-179. See also DEIS at 2 (Executive Summary stating only that "potential environmental justice issues have been identified"). No statement regarding disproportionate impacts appears in this discussion and the word "high" only appears once -- in reference to the costs to remote rural areas were "wild foods and materials" to become "absent" thereby requiring "imported substitutes." Of course, there is no basis for any suggestion that changes to the ACMP subsistence standard are even remotely expected to lead to the complete absence of subsistence resources. Moreover, the economic effects to which this entire section is addressed are neither human health nor environmental impacts with which EO 12898 is concerned.

The remainder of the EJ analysis addresses, under the heading of social impacts, "the new emphasis on State control and, what has been perceived by local governments, as a loss of their involvement in critical subsistence resource management." DEIS at 179. Again, neither social impacts nor perceived (or actual) shifts from local to state control are human health or environmental impacts. As discussed in section II.A above, the CZMA grants to states the right to select among three basic coastal zone program models. The blended model lawfully selected by the State of Alaska emphasizes direct state implementation of its coastal zone program combined with local implementation focused on matters of local concern not otherwise regulated by state and federal laws and regulations. As acknowledged by OCRM, this blended program design provides for a substantial local role. DEIS (Vol. II) at Appendix A, p. 3. Indeed, OCRM has concluded that the new subsistence standard meets the CZMA's requirements for the local implementation model. *Id.* As the DEIS acknowledges, Congress through the CZMA left to the states the public policy choice of what model of coastal zone program to adopt. The State of Alaska's lawful policy choice consistent with the CZMA cannot be undermined by conflating policy choices with which some local coastal districts may disagree, and environmental justice.

In sum, the EJ analysis in the DEIS is deeply flawed and in no way reaches the appropriate issues. Even in its currently flawed state, the DEIS does not conclude that there are disproportionately high and adverse human health and the environmental impacts to minority or low-income populations. OCRM should revise the EJ analysis, and the accompanying ROD should clarify that lawful policy choices by the State, and any related political disagreements regarding state versus local control of the coastal zone program, are not proper concerns under EO 12898.

III. CONCLUSION

Stepping back from the details, we think it is very instructive to take a pragmatic look at the decision facing OCRM. Alaska has revised its coastal management program to "improve its consistency review process both in timing and predictability, thereby reducing duplication of permit review with broadly defined statewide standards, and provide certainty. . . ." DEIS at p.x. As a part of this process, Alaska has "replaced the current statewide standards and coastal district enforceable policies . . . to achieve statewide standards and coastal district enforceable policies that are less susceptible to subjective interpretation and non-duplicative of existing requirements; . . ." *Id.* Nothing in OCRM's accurate statement of Alaska's intent, reflects a purpose or need to lessen or eliminate environmental protection, whether for subsistence or for other coastal resources. Instead, Alaska has made a permissible policy decision to eliminate duplication and to redraft its procedural rules and substantive policies to be clear, less subjective and more predictable.

Having made these changes – some of which involved complex discussions and negotiations, and tough policy choices among competing stakeholder interests – the decision facing OCRM is whether the program still meets the requirements of the CZMA. OCRM has already determined, albeit preliminarily, that it does. It is very telling to us that in the public comment process to this point, we have heard of no identifiable programmatic deficiency linking the revised ACMP to a specific CZMA requirement. What we have heard, and what the DEIS inappropriately reflects in its consideration of subsistence and environmental justice, is a continuation of the heated policy debate between a locally-controlled versus a state-controlled program.

Ms. Helen Bass, Environmental Protection Specialist
National Oceanic and Atmospheric Administration
OCRM/CPD
November 7, 2005
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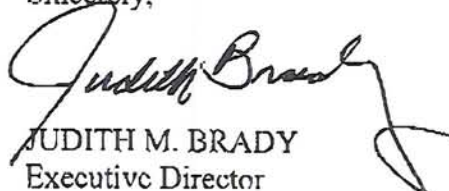
First, let us reiterate that AOGA is a strong supporter of the intent of EO 12898 in ensuring efforts to achieve environmental justice. Second, let us be clear that the new subsistence standard does not, lessen environmental protection of coastal subsistence resources and uses. AOGA would oppose any change that would lessen the environmental protection of coastal subsistence resources and uses. In the forty years of oil and gas operations in Alaska the industry has consistently supported protection of habitat, fish and game and the subsistence lifestyle.

The objections to the approach taken in the DEIS do not reflect any lack of support for environmental justice or for the protection of subsistence, but do reflect objection to a flawed methodology and resulting conclusions, as well as the mischaracterization of the level of protection under both the State standard and the former subsistence standard. The former subsistence standard did not provide for imposition of mitigation measures. There was no provision for payment of monetary damages for subsistence impacts. The current subsistence standard is no different; mitigation conditions and monetary damages may not be imposed. Moreover, although the State has made a lawful policy choice favoring a narrower role for local coastal districts, there is no basis other than sheer speculation to suggest that such a program necessarily weakens protection of subsistence resources or has disproportionately high and adverse impacts on minority and low-income populations.

If the revised ACMP is approved, Alaska's coastal management program will continue to achieve the important purposes of the CZMA, including protection of important coastal resources, balanced coastal community development, improved intergovernmental coordination in management of coastal resources and development, and greater public awareness. If the revised ACMP is not approved, Alaska's coastal program will sunset by law. Pragmatically, we do not understand how approving the revised ACMP can be characterized as raising subsistence and environmental justice concerns, when it comports with the requirements of the CZMA and when the alternative is termination of the program.

AOGA sincerely appreciates this opportunity to comment on the DEIS. Please do not hesitate to contact me at (907) 272-1481 or brady@aoga.org if you have any questions.

Sincerely,


JUDITH M. BRADY
Executive Director

cc: Jim Clark, Chief of Staff
Michael Menge, Commissioner of Natural Resources
Randy Bates, Acting Director, Office of Project Management and Permitting